

Internal Revenue Service

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Washington, DC 20224

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CC:TEGE:EOEG:EO

PLR-130494-14

Date:

December 08, 2014

Legend

Trust	=
Trustee	=
Date	=
A	=
B	=
C	=
D	=
E	=

Dear :

This letter responds to a letter from your authorized representative dated June 16, 2014, and subsequent correspondence submitted on behalf of Trust, requesting a ruling that Trust's income is excludable from gross income under Internal Revenue Code (IRC) § 115. Trust represents the facts as follows.

FACTS

A is a political subdivision of the State of B, operating as a C pursuant to D.

A provides health and other welfare benefits (OPEB) to Covered Persons (retirees of A, their eligible spouses, and their dependents) pursuant to E. Covered Persons can designate beneficiaries to receive death benefits or other benefits that are payable under the E. OPEB are post-employment benefits other than pension benefits and include medical, dental, vision, life insurance, long-term care, and other similar health and welfare benefits provided to Covered Persons and their beneficiaries.

Previously, A pre-funded a portion of its future retiree health care costs through a pooled trust with multiple other governmental entities (the Multiple Employer Trust). The Multiple Employer Trust received a private letter ruling dated Date stating that the income of the Multiple Employer Trust is excludable from gross income under IRC § 115.

For ease of administration and to reduce administrative fees paid to the third-party administrator of the Multiple Employer Trust, A has established Trust.

The assets attributable to A that are currently held in the Multiple Employer Trust will be directly transferred by the trustee of the Multiple Employer Trust to the Trustee of Trust to be used to fund OPEB costs incurred by A. Going forward, Trust will continue to receive contributions from A as needed to fund it. Trust assets will be used for the exclusive purpose of providing OPEB to Covered Persons and their beneficiaries and for defraying reasonable administrative and actuarial expenses. According to Trust's governing instrument, under no circumstances will the assets be used for, or diverted to, any other purpose, except as permitted under IRC § 115 and other applicable law.

The Trustee, selected by duly authorized representatives of A, manages and administers the assets of Trust, subject to the direction of the plan administrator, who is appointed by and subject to removal by A. The Trustee is responsible for holding, investing and reinvesting Trust's assets, and for making payments from Trust, via direction received from A or its authorized representative, solely for the benefit of Covered Persons and their beneficiaries. A has the right to remove the Trustee upon giving sixty days' advance written notice (unless notice is waived by the Trustee).

No Covered Person or beneficiary shall have any claim to or interest in a specific asset of the Trust, or any right to assign, transfer, encumber, commute, or anticipate his beneficial interest in the Trust.

Trust may be dissolved by A. However, upon termination of Trust, any remaining assets will be used to provide OPEB to Covered Persons and their beneficiaries. Any assets remaining in Trust after satisfying all benefit obligations may be paid to A to the extent consistent with IRC § 115. In no event will Trust's assets be distributed or revert to any entity that is not a state, a political subdivision of a state, or another entity the income of which is excluded from its gross income by application of IRC § 115.

LAW AND ANALYSIS

IRC §115(1) provides that gross income does not include income derived from any public utility or the exercise of any essential governmental function and accruing to a state or any political subdivision thereof.

Rev. Rul. 77-261, 1977-2 C.B. 45, holds that income generated by an investment fund that is established by a state to hold revenues in excess of the amounts needed to meet current expenses is excludable from gross income under IRC § 115(1), because such investment constitutes an essential governmental function. The ruling explains that the statutory exclusion is intended to extend not to the income of a state or municipality resulting from its own participation in activities, but rather to the income of an entity engaged in the operation of a public utility or the performance of some governmental function that accrues to either a state or political subdivision of a state. The ruling points out that it may be assumed that Congress did not desire in any way to restrict a state's participation in enterprises that might be useful in carrying out projects that are desirable from the standpoint of a state government and that are within the ambit of a sovereign to conduct.

Rev. Rul. 90-74, 1990-2 C.B. 34, holds that the income of an organization formed, funded, and operated by political subdivisions to pool various risks (e.g., casualty, public liability, workers' compensation, and employees' health) is excludable from gross income under IRC § 115(1) because the organization is performing an essential governmental function. The revenue ruling states that the income of such an organization is excluded from gross income so long as private interests do not participate in the organization or benefit more than incidentally from the organization. The benefit to the employees of the insurance coverage obtained by the member political subdivisions was deemed incidental to the public benefit.

Through Trust, A provides OPEB to Covered Persons and their beneficiaries. Providing these health and welfare benefits constitutes the performance of an essential government function within the meaning of IRC § 115(1). See Rev. Rul. 90-74 and Rev. Rul. 77-261.

Trust's income accrues to A. No private interests will participate in, or benefit from, the operation of Trust other than as providers of goods or services. The benefit to Covered Persons and their beneficiaries is incidental to the public benefit. See Rev. Rul. 90-74.

In no event, including dissolution, will Trust's assets be distributed or revert to any entity that is not a state, a political subdivision of a state, or another entity the income of which is excluded from its gross income by application of IRC § 115.

Based solely on the facts and representations submitted by Trust, we conclude that:

Because the income of Trust derives from the exercise of an essential governmental function and will accrue to a state or a political subdivision thereof, Trust's income is excludable from gross income under IRC §115(1).

No opinion is expressed concerning the Federal tax consequences under any IRC provision other than the one specifically cited above. In particular, no representation is

made that contributions or premiums paid on behalf of or benefits received by employees, former employees, retirees, spouses, dependents or others will be tax-free. This ruling concerns only the Federal tax treatment of Trust's income and may not be cited or relied upon as to any matter relating to the taxation of accident or health contributions or benefits.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. IRC § 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Casey Lothamer
Senior Technician Reviewer
Exempt Organizations
(Tax Exempt & Government Entities)